

REMARKS:

Applicant respectfully submits the following remarks with regard to the pending Office action.

REMARKS REGARDING CLAIMS AMENDMENTS:

Claims 3, and 4 have been amended to provide allowable claims from claims objected to by the Examiner. These claims were indicated to be allowable if rewritten to include limitations of claims, i.e. either of claims 1 or 2, from which they depended previously.

Accordingly, claims 3 and 4 are independent claims amended to include the limitations of original claim 1.

Entry of claim 8 is respectfully requested to provide an independent claim complying with the examiner's requirement to provide an independent claim including the limitations of original claim 3 and claim 2 from which claim 3 previously depended.

Entry of claim 9 is also requested to provide an independent claim complying with the examiner's requirement to provide an independent claim including the limitations of original claim 4 and claim 2 from which claim 4 previously depended.

Request is respectfully made for reconsideration and allowance of claims 3, 4, 5, 8 and 9.

REJECTION UNDER 35 U.S.C. § 103(a):

Although the Office Action is a Final Action, the Examiner appeared to offer the opportunity for allowance of additional claims by responding to the rejection of claims discussed in the following section. Applicant has provided evidence that the applied references do not support a *prima facie* case of obviousness and respectfully requests entry of the response and withdrawal of rejection of the affected claims.

The Office Action indicated rejection of claims 1, 2 and 6 under 35 U.S.C. § 103(a) as being unpatentable over WO 93/01065 in view of Erban (US 6,493,622). In the following section, the statement of rejection is provided for convenient reference in light of evidence suggesting that the combination of references is ineffective as a basis for rejection of claims 1, 2 and 6 of the present invention for obviousness.

WO discloses an engine (2) drivingly associated with paired sets of drive wheels (4), a differential (7) arranged between the paired drive wheels of a set and including differential locks (8) for locking the differentials, a control unit (6 and 14) configured to control the engine and differential locks and reduce speed of the engine after receiving an input signal indicating locking of the differentials (via 24). WO does not disclose reducing positive or negative torque of the engine.

Erban discloses an engine (14) associated with paired sets of wheels (10), a differential (11, 13) arranged between the paired drive wheels of a set and including a differential locking function using brakes (via 20) for braking speed difference between the wheels to protect the differentials, a control unit (15) configured to control the engine to reduce output torque or engine speed to a viable or manageable level.

According to the statement from the Office Action, presented above, WO 93/01065 (Warmenius et al.) teaches “a control unit (6 and 14) configured to control the engine and differential locks” and the control unit “reduce(s) speed of the engine after receiving an input signal indicating locking of the differential (via 24).”

At page 3, lines 17 - 24, Warmenius et al. teaches that, “The acceleration of the engine 2 is controlled by the driver by means of a so-called electric accelerator pedal 5, which means that the transmission between the accelerator pedal and the engine takes place electrically instead of mechanically. For this purpose an electrical control unit 6 is connected to the engine and controls the acceleration of the engine 2 dependent, among other things, on signals from the accelerator pedal. Engine control unit 6 is also connected to other transmitters in the vehicle for optimum control of the engine 2.”

At page 3, lines 25 – 29, Warmenius et al. further teaches that, “Differential gear 7 incorporates a differential lock 8, by means of which driving wheels 4 of the vehicle can be mechanically coupled together. Differential lock 8 is controlled by means of pneumatic servomechanisms which are controlled by means of electrical solenoid valves.” (see also page 4, line 11).

Review of the teachings of Warmenius et al. does not suggest that the differential lock 8 is under the control of the control unit 6 used for optimum control of the engine. Further evidence that the action of the control unit 6 is limited to engine control is found with reference to identifying numerals 14 and 24 mentioned in the Office Action.

Numeral 14 designates a control unit “connected via inputs 18, 19 to feed cables 15, 31 for driving different sub-components.” Also, control unit 14 “is connected via a second output 20

to engine control unit 6 - - ." Consequently, there is nothing to suggest control of the differential lock 8 by the control unit 14.

Further, at page 4, lines 34 – 35, Warмениus et al. states, "The output circuit 24 is connected via output 20 to engine control unit 6."

Since each of the components 6, 14 and 24 are taught by Warмениus et al. to cooperate in control of the engine, there appears to be no evidence that the reference teaches control of a "differential lock" or a control unit acting on a "signal indicating locking of the differential."

In addition, the reference is silent concerning a component that controls the differential lock, since Warмениus et al. clearly states that, "A manual switch 9, for engaging and disengaging differential lock 8, is arranged near the driver's seat." (page 3, lines 32 – 33). Further evidence that the differential lock is driver operated is given by, "When the driver wants to engage differential lock 8, he moves the switch 9 to an activated position, - - ." (page 4, lines 25 – 26).

Evidence from Warмениus et al. indicates that there is no teaching of a control unit for the differential lock. The reference clearly teaches a differential lock requiring manual operation.

Contrary to the teachings of Warмениus et al., claim 1 of the present invention does require, "a control unit (3) configured to control the engine and the differential lock (7, 8, 48, 49, 50)." Failing to teach this requirement, Warмениus et al. is ineffective as a basis for rejection of claim 1 for obviousness.

Claim 2 of the present invention recites, "a control means for controlling the engine and the differential lock (7, 8, 48, 49, 50)." For reasons given above, Warмениus et al. also fails to provide basis for rejection of claim 2.

In the Office Action, the Examiner stated that Erban is a secondary reference. Since the primary reference of Warмениus et al. does not teach required limitations of claims 1 and 2 of the present invention, the addition of Erban is no longer relevant to the rejection of claims 1, 2 and 6.

Applicant believes that original claims 1 and 2 and claim 6 that depends therefrom should be allowed and requests that the Examiner reconsider and withdraw the above rejection of the claims.

The Office Action also indicated rejection of claim 7 under 35 U.S.C. §103(a) as being unpatentable over Warмениus et al. in view of Erban as applied to claims 1 and 2 above, and

further in view of the background art of the present invention. Warmenius et al. fails to teach limitations of claims 1 and 2, as discussed above. Claim 7 is a multiple dependent claim dependent from claim 1 or 2. Evidence has been provided that claims 1 and 2 are patentable over the applied references individually or combined. Claim 7 should likewise be patentable.

Applicant requests reconsideration and withdrawal of rejection of claim 7 under 35 U.S.C. §103(a).

In view of the above, Applicant submits that the requirement and burden of presenting of a prima facie case of obviousness under 35 USC §103 has not been met. Therefore Applicant requests the reconsideration and withdrawal of the rejection of Claims 1, 2, 6 and 7 under 35 USC §103 and that the Examiner indicate the allowance of the claims in the next paper from the Office.

ALLOWABLE SUBJECT MATTER

Applicants acknowledge with appreciation that Claims 3 - 5 represent allowable subject matter, overcoming objection if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In compliance with the Examiner's requirement, claims 3 and 4 have been amended as suggested. Original claim 5 depends from claim 3 and should likewise be allowed.

To fully capture the allowable subject matter it was necessary to include new claims 8 and 9, which claims contain the limitations of claims 3 and 2 and claims 4 and 2 respectively.

It is believed that original claims 1, 2, 6 and 7 should be allowed as discussed above.

Applicant has made an earnest attempt to respond to all the points included in the Office Action and, in view of the above, requests reconsideration of the application and notification of allowance of claims 1 - 9 in the next paper from the Office.

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The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, Order No. 7589.193.PCUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner should directly contact the undersigned by phone to further the discussion.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Tracy W. Druce".

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